

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

**DIVISION FOUR**

STATE OF MISSOURI,	)	No. ED101892
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit Court of
	)	St. Charles County
vs.	)	
	)	Honorable Daniel G. Pelikan
HERMES MENDEZ,	)	
	)	
Defendant/Appellant.	)	Filed: April 12, 2016

Hermes Mendez (Appellant) appeals from the trial court's judgment entered upon a jury verdict convicting him of forcible sodomy and felonious restraint and sentencing him to a total of twelve years in prison.

**AFFIRMED AND REMANDED FOR CORRECTION OF CLERICAL ERROR.**

Division Four Holds: The trial court did not abuse its discretion in admitting evidence of Appellant's prior abuse of Victim because its relevance outweighed its potential prejudice based on the totality of the circumstances; the violence that preceded the charged incidents; the age differential of Appellant and Victim; the atmosphere and setting of the incidents; Appellant's authority, domination and control over Victim; and the fact that Victim was under duress. The trial court did not err in overruling Appellant's motion for judgment of acquittal of felonious restraint at the close of all of the evidence due to insufficient evidence Victim was exposed to a substantial risk of serious physical injury based on her alleged lack of serious injury because in establishing the elements of felonious restraint, whether the victim actually suffered serious physical injury is irrelevant. The trial court made a clerical error in its written judgment of conviction and sentence on Counts I and II because Appellant was convicted and sentenced on Counts II and III and acquitted of Count I.

Opinion by: Sherri B. Sullivan, P.J. Kurt S. Odenwald, J., and Lisa P. Page, J., concur.

Attorney for Appellant: Gwenda Renee Robinson  
Attorney for Respondent: Rachel Sara Flaster

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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